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The Commonwealth of Massachusetts
Executive Office of Public Safety
Fire Safety Commission

Automatic Sprinkler Appeals Board

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MAURICE M. PILETTE
CHAIRMAN

PAUL DONGA
VICE CHAIR

Docket #: 2005-40
3 Hadley Street
South Hadley, Massachusetts

AUTOMATIC SPRINKLER APPEALS BOARD
DECISION AND ORDER

A) Statutory and Regulatory Framework

This is an administrative appeal held in accordance with Massachusetts General Laws Chapter 30A; Chapter 148, section 26G1/2 and Chapter 6, section 201, relative to a determination of the South Hadley Fire Department, requiring the installation of an adequate system of automatic sprinklers in a building operated by Woodbridge's Restaurant owned by Edward J. Ryan, Jr. (hereinafter referred to as the Appellant). The building, which is the subject of the order, is located at 3 Hadley Street, South Hadley, MA.

B) Procedural History

By written notice received on April 5, 2005, the South Hadley Fire Department, District #2, issued an Order of Notice to the Appellant informing him about the provisions of a new law, M.G.L c. 148, s.26G1/2, which requires the installation of an adequate system of automatic sprinklers in certain buildings or structures. The building subject to the order is located at 3 Hadley Street, South Hadley, MA. The Appellant filed an appeal of said order on May 19, 2005. The Board held a hearing relative to this appeal on November 9, 2005, at the Department of Fire Services, Stow, Massachusetts.

The Appellant, Attorney Edward J. Ryan, Jr., appeared on behalf of himself. Fire Chief David A. Keefe and Building Commissioner Steven Reno, appeared on behalf of the Town of South Hadley.

Present for the Board on November 9, 2005 were: Maurice M. Pilette, Chairperson, Brian Gore, Chief Thomas Coulombe, Stephen D. Coan, State Fire Marshal, and Edward G. McCann. Peter A. Senopoulos, Esquire, was the Attorney for the Board.

C) Issue(s) to be Decided

Whether the Board should affirm, reverse or modify the enforcement action of the South Hadley Fire Department relative to the subject building in accordance with the provisions of M.G.L. c.148, s. 26G1/2?

D) Evidence Received

1. Application for Appeal
2. Written statement in Support of Application for Appeal
3. Order of South Hadley Fire Department
4. Notice of hearing to Appellant
5. Notice of hearing to South Hadley Fire Department
6. Stipulation of Facts
7. Common Victualer's License
8. Floor Plan
9. Interior Photographs (A-V)
10. Certificate of Inspection dated May 13, 2005
11. Accounting Document of Alcohol v. Food Sales dated November 8, 2005
12. Menu from Woodbridge's

E) Subsidiary Findings of Fact

- 1) By notice dated March 17, 2005 and delivered on April 5, 2005, the South Hadley Fire Department issued an Order to the Appellant requiring the installation of an adequate system of automatic sprinklers in a building located at 3 Hadley Street, South Hadley, in accordance with the provisions of M.G.L. c. 148, s.26G1/2. This building is occupied by an establishment that operates under the name of Woodbridge's Restaurant, a private, for profit organization.
- 2) According to the building's Certificate of Inspection, issued by the town on May 13, 2005, the establishment has a capacity of 163 persons throughout the facility, which according to the building's floor plan, includes four dining areas. Said certificate of inspection does not indicate the particular use group of this building. However, according to the testimony of the Building Commissioner, he would consider the building to have a use group classification of "A-3".
- 3) The building is a wood frame structure that dates back to 1742 with wing additions that were added later. The first floor is occupied by Woodbridge's Restaurant. The 2nd floor is not occupied by the restaurant, but contains an unoccupied apartment. The building also has a basement crawl space.
- 4) The Appellant contends that the establishment is principally used, advertised and held out as a restaurant and is therefore exempt from the sprinkler provisions of M.G.L. c.148, s. 26G1/2. He submitted documentation, dated November 8, 2005 from a certified public accounting firm which indicated that during "the past several years" food sales accounted

for 70% of the business and beverage sales accounted for 30% of the establishment's annual sales.

- 5) The establishment serves full meals on a daily basis. Kitchen operating hours are from 11 a.m. to 10 p.m. Sunday through Thursday, and 11 a.m. to 11 p.m. on Fridays and Saturdays.
- 6) The establishment is licensed to serve all types of liquor. According to testimony and the building's floor plan, one of the dining areas contains a bar that customers can patronize for the purchase of liquor. The bar area has a limited number of seats and has standing room available just behind bar seating. Full food service is available in this bar area. The Appellant testified that this bar area does not operate more than one hour after full kitchen facilities have been closed.
- 7) The appellant testified that the restaurant does not feature a dance floor and it does not ordinarily feature live or recorded music above normal sound levels or for dancing purposes.
- 8) The appellant indicated that the facility is not rented or leased out for functions. However, the restaurant does provide service for small functions in which restaurant staff are present and that the facility remains in the total control of the operator. At such events meals are always served and are the primary event attraction.
- 9) The fire department does not contest the characteristics and activities which occur in this building as presented by the appellant. The fire department issued the Order to install sprinklers based upon the overall building capacity, the existence of liquor sales and a bar area. The fire chief indicated that he was uncertain about the applicability of the provisions of s.26G1/2 to this particular facility and seeks the Board's guidance.

F) Ultimate Findings of Fact and Conclusions of Law

- 1) The provisions of the 2d paragraph of M.G.L. c. 148, s. 26G1/2, in pertinent part, states: "every building or structure, or portions thereof, of public assembly with a capacity of 100 persons or more, that is designed or used for occupancy as a night club, dance hall, discotheque, bar, or similar entertainment purposes...(a) which is existing or (b) for which an approved building permit was issued before December 1, 2004, shall be protected throughout with an adequate system of automatic sprinklers in accordance with the state building code". The law was effective as of November 15, 2004. Under the provisions of the new law (St. 2004, c.304, s.11) an owner is required to submit plans and specifications for the installation of such sprinklers within 18 months of the effective date of the act (May 15, 2006) and is required to complete the mandated sprinkler installation by November 15, 2007.
- 2) The subject building is considered a public assembly with a capacity of 100 persons or more.

- 3) This law specifically does not apply to a place of assembly within a building, structure or portions thereof used principally as a “restaurant”. Based upon the evidence submitted at the hearing by both parties, this establishment, as currently used and designed, features characteristics that are typical of a restaurant. It clearly appears that the service of food is the primary customer attraction. The Building Commissioner’s conclusion that he would classify this particular establishment as an “A-3” assembly use group is consistent with and supports this Board’s finding.
- 4) This establishment clearly does not regularly or routinely feature the A-2 characteristics that this Board has found to be typical of nightclubs, dance halls and discotheques (see guidance memorandum of this Board dated 1-10-05). Such characteristics include:
 - a) No theatrical stage accessories or a raised platform;
 - b) Low lighting levels;
 - c) Entertainment by a live band or recorded music generating above-normal sound levels;
 - d) Later-than-average operating hours;
 - e) Tables and seating arranged or positioned so as to create ill defined aisles;
 - f) A specific area designated for dancing;
 - g) Service facilities primarily for alcoholic beverages with limited food service; and
 - h) High occupant load density.
- 5) This establishment does features a bar with 12 bar seats within a portion of one of the four dining areas. However, full food service is available in this bar area. This bar area does not remain open more than one hour after kitchen service is terminated and at such times there are not more than 20 customers in the bar area. Accordingly, this bar as described and used, is merely incidental and merely compliments the principal use of this establishment as a restaurant.
- 6) The Board notes that on rare occasions live entertainment may be provided for viewing or dancing purposes. However, such activities, as described, do not occur often, regularly or on a routine basis. The Board notes that M.G.L. c. 148, s.26G1/2 (4th paragraph) allows a building principally used as a restaurant to be used temporarily as a nightclub, dance hall, discotheque or bar, or similar entertainment purpose without the need to install a sprinkler system if a permit is issued by the head of the fire department in consultation with the building inspector who may set the terms and conditions to protect against fire and preserve public safety.

G) Decision and Order

This establishment clearly has the characteristics of a restaurant. The sprinkler requirements of M.G.L. c.148, s.26G1/2 do not apply to places of assembly within a building or portions thereof,

used principally as a restaurant. Although a small bar with minimal seating capacity exists in one of the dining areas, the use of this bar area ,which also provides full food service, is merely incidental to the principal use of the establishment as a restaurant and the service of food. For the foregoing reasons, this Board **reverses** the Order of the South Hadley Fire Department to install sprinkler protection in the subject building in accordance with the provisions of M.G.L. c.148, s.26G1/2. This determination is contingent upon the continued use and operation of the establishment in a manner consistent with the findings herein.

H) Vote of the Board

Maurice Pilette, (Chairperson)	In Favor
Stephen D. Coan, State Fire Marshal	In Favor
Thomas Coulombe	In Favor
Brian Gore	In Favor
Edward G. McCann	In Favor

I) Right of Appeal

You are hereby advised that you have the right, pursuant to section 14 of chapter 30A of the General Laws, to appeal this decision, in whole or in part, within thirty (30) days from the date of receipt of this order.

SO ORDERED,



Maurice Pilette, P.E.. Chairman
Chairperson

Dated: December 21, 2005

A COPY OF THIS DECISION AND ORDER WAS FORWARDED BY 1st CLASS MAIL, POSTAGE PRE-PAID, TO: Edward J. Ryan, Jr., P.O. Box 190, 129 College Street, S. Hadley, Massachusetts 01075 **and to** Chief David Keefe, South Hadley Fire Department, Fire District 2, 20 Woodbridge Street, S. Hadley, Massachusetts 01075.